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****E-filed 11/1/05****

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Attorneys for the UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HORTA, LLC,

Plaintiff,

v.

CITY OF SAN JOSE,

Defendant.

CASE NO. C 02-04086 JF (RS)

[Related Case Nos. C 00-20018 JF
and C 05-03778 JF]

**STIPULATION AND [PROPOSED] ORDER
CONSOLIDATING HEARING DATES ON
HORTA, LLC'S MOTION FOR SUMMARY
JUDGMENT AND FEDERAL AVIATION
ADMINISTRATION'S MOTIONS TO
QUASH**

[Civil Local Rule 6-2]

Judge: Hon. Jeremy Fogel
Complaint: August 23, 2002

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action;

WHEREAS, on March 14, 2005, plaintiff Horta, LLC ("Horta") filed its Motion to Reconsider, Reopen, and Amend Judgment (the "Motion to Amend") and set it for hearing on May 6, 2005;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has served discovery on Federal Aviation Administration ("FAA") consisting of document requests and requests for deposition testimony relating to issues presented in the Motion to Amend in the form of subpoenas issued pursuant to Rule 45 of the Federal Rules of Civil Procedure, as well as written requests pursuant to 49 C.F.R. §§ 9.1 *et seq.*;

WHEREAS, the FAA has produced some documents but disputes its obligation to provide additional documents and to make subpoenaed witnesses available for deposition;

WHEREAS, Horta has filed a separate action to enforce its right to the requested discovery, entitled *Horta, LLC v. Federal Aviation Administration*, United States District Court, Northern District of California, Case No. C 05-03778 JF (RS) (the "Horta/FAA Action"), which case has been related to this action;

WHEREAS, the FAA has filed two motions to quash Horta's subpoenas issued pursuant to Rule 45 of the Federal Rules of Civil Procedure for documents and deposition testimony, which are currently set for hearing in this action before the Honorable Richard Seeborg on **November 23, 2005** (collectively, the "Motions to Quash");

WHEREAS, Horta has filed a Motion for Summary Judgment and Permanent Injunction in the Horta/FAA Action seeking to compel the production of documents and deposition testimony relating to issues presented in the Motion to Amend, which is set for hearing before the Honorable Jeremy Fogel on **December 16, 2005** (the "Motion for Summary Judgment");

WHEREAS, the issues presented, and underlying facts, in the FAA's Motions to Quash and Horta's Motion for Summary Judgment are identical;

1 WHEREAS, if the Motions to Quash and the Motion for Summary Judgment were
2 adjudicated by two different judges, there is a possibility of inconsistent rulings;

3 WHEREAS, Horta and the FAA desire to conserve judicial resources and avoid the
4 possibility of inconsistent rulings by having the Motions to Quash and the Motion for Summary
5 Judgment concurrently heard and adjudicated by the Honorable Jeremy Fogel;

6 THEREFORE, IT IS HEREBY STIPULATED by and between Horta and the FAA, and
7 subject to the approval of the Court, as follows:

8 1. The FAA's Motions to Quash and Horta's Motion for Summary Judgment shall be
9 consolidated before the Honorable Jeremy Fogel;

10 2. The Motions to Quash and the Motion for Summary Judgment shall be heard
11 together on December 16, 2005 at 9:00 a.m., or as soon thereafter as the matter may be heard, in
12 the courtroom of the Honorable Jeremy Fogel, located at 280 South First Street, San Jose,
13 California;

14 3. The briefing schedule for the Motions to Quash and the Motion for Summary
15 Judgment shall run concurrently and be determined according to the December 16, 2005 hearing
16 date. Specifically, any oppositions to the respective motions shall be filed no later than
17 November 23, 2005, and any briefs in reply shall be filed no later than December 2, 2005;

18 4. The deadline for the defendants in the Horta/FAA Action to answer, move, or
19 otherwise respond to the First Amended Complaint filed in that action shall be extended to a date
20 ten (10) court days after the Court's ruling on the Motions to Quash and the Motion for Summary
21 Judgment.

22 Dated: October 31, 2005

DLA PIPER RUDNICK GRAY CARY US LLP

23
24 By 
25 JAMES M. CHADWICK
26 DIANA NG FUNG
27 Attorneys for Plaintiff HORTA, LLC
28

1 Dated: October 31, 2005

KEVIN V. RYAN
United States Attorney

2
3 By 
CLAIRE T. CORMIER
Assistant United States Attorney
Attorneys for the UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

7 **ORDER**

8 PURSUANT TO STIPULATION, IT IS SO ORDERED. The hearings on FAA's
9 Motions to Quash and Horta's Motion for Summary Judgment shall be concurrently set for
10 December 16, 2005 at 9:00 a.m. in the courtroom of the Honorable Jeremy Fogel, located at 280
11 South First Street, San Jose, California. Any opposition to these respective motions shall be filed
12 no later than November 23, 2005, and any briefs in reply shall be filed no later than December 2,
13 2005.

14 The last day for the defendants in the Horta/FAA Action to respond to the First Amended
15 Complaint is extended to a date ten (10) court days after the Court's ruling on the FAA's Motions
16 to Quash and Horta's Motion for Summary Judgment.

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18 Dated: October 11/1, 2005

19
20 /s/electronic signature authorized

21 JEREMY FOGEL
22 UNITED STATES DISTRICT COURT JUDGE

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1 Dated: October __, 2005

KEVIN V. RYAN
United States Attorney

3 By _____

CLAIRE T. CORMIER
Assistant United States Attorney
Attorneys for the UNITED STATES
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

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15 Complaint is extended to a date ten (10) court days after the Court's ruling on the FAA's Motions
16 to Quash and Horta's Motion for Summary Judgment.

17
18 Dated: October ____, 2005

21 _____
JEREMY FOGEL
UNITED STATES DISTRICT COURT JUDGE